

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

-----: :
UNITED STATES OF AMERICA : :
 : :
-vs- : Case No. 1:17-cr-204
 : :
ROSEMBERG M. MAJANO :
and :
JOSE A. ORELLANA MONTALVO, :
Defendants. :
-----: :

PARTIAL TRANSCRIPT
(Defendant Orellana Montalvo's Testimony)

November 29, 2017

Before: Liam O'Grady, USDC Judge

And a Jury

APPEARANCES:

Thomas W. Traxler and Dennis Fitzpatrick,
Counsel for the United States

Dwight E. Crawley, Counsel for Defendant Majano

Gregory B. English, Counsel for Defendant Orellana Montalvo
Defendants, R.M. Majano and J.A. Orellana Montalvo, in person

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1 NOTE: A portion of the case is heard on November 29,
2 2017 in the absence of the jury as follows:

3 JURY OUT

4 THE COURT: All right, ladies and gentlemen, please
5 have a seat.

6 Mr. Majano, you have a right to testify in the case,
7 and an absolute right not to testify if you do not wish to.
8 And I want you to speak with your counsel now about your rights
9 and your decision. All right?

10 MR. ENGLISH: Your Honor, may I step out?

11 THE COURT: Yes, please, go ahead.

12 NOTE: Mr. English leaves the courtroom.

13 THE COURT: So take a moment with Mr. Crawley, Mr.
14 Majano.

15 NOTE: A discussion is had between defendant Majano
16 and his counsel.

17 MR. CRAWLEY: At the appropriate time he's -- I don't
18 know if you want to wait for Mr. English to return.

19 THE COURT: I don't think we need to wait for Mr.
20 English.

21 MR. CRAWLEY: Thank you, Your Honor.

22 THE COURT: Mr. Majano, have you had an opportunity
23 to discuss with your counsel, Mr. Crawley, whether you'll
24 testify or not?

25 DEFENDANT MAJANO: (Through Interpreter) Yes, I did

1 speak.

2 THE COURT: All right. So you understand you have
3 the right to testify in your case if you wish. If you do so,
4 you will be subject to cross-examination by Government
5 attorneys.

6 If you decide you do not wish to testify, you have
7 the right to remain silent. And the fact that you have not
8 testified in the case cannot be used against you as evidence of
9 your guilt.

10 Do you understand that?

11 DEFENDANT MAJANO: (Through Interpreter) Yes.

12 THE COURT: All right. You have had sufficient
13 opportunity to speak to Mr. Crawley about the decision?

14 DEFENDANT MAJANO: (Through Interpreter) Yes.

15 THE COURT: All right. And are you going to testify
16 or not in the case?

17 DEFENDANT MAJANO: (Through Interpreter) I will not
18 testify.

19 THE COURT: All right. Mr. Crawley, do you think you
20 have had sufficient time to speak with Mr. Majano about
21 testifying or not, sir?

22 MR. CRAWLEY: Yes, Your Honor. In fact, I met with
23 him many times at the Alexandria Jail.

24 THE COURT: All right. Okay. Then Mr. Majano will
25 not testify.

1 Do you have any other witnesses that you will call?

2 MR. CRAWLEY: No, Your Honor, not on behalf of Mr.
3 Majano.

4 THE COURT: All right. Then we will wait for Mr.
5 English then. And I will ask you whether you have any
6 witnesses you want wanted to call and just tell the jury at
7 that time.

8 NOTE: Mr. English returns to the courtroom.

9 THE COURT: All right, Mr. English, Mr. Majano has
10 indicated he is not going to testify. And Mr. Crawley has no
11 other witnesses that he is going to call.

12 Have you had the opportunity to speak to Mr. Orellana
13 Montalvo about testifying?

14 MR. ENGLISH: Yes, sir, Your Honor, I have explained
15 his options. And he elects to testify.

16 THE COURT: So he understands that he may rely on the
17 right to remain silent and not testify, and that no inference
18 of his guilt can be made because he has not testified? And on
19 the other hand, if he does testify, he is subject to
20 cross-examination under our rules of evidence; is that correct?

21 MR. ENGLISH: Yes, sir, Your Honor. If the Court
22 would like to inquire, he would be happy to answer any of your
23 questions.

24 THE COURT: Mr. Orellana, have you had an opportunity
25 to speak with your counsel about testifying, sir?

1 DEFENDANT ORELLANA MONTALVO: Yes, Your Honor.

2 THE COURT: And after discussing it fully with him,
3 you decided to waive your right to remain silent and testify in
4 your defense?

5 DEFENDANT ORELLANA MONTALVO: Yes, Your Honor.

6 THE COURT: Okay. All right. Have a seat.

7 MR. ENGLISH: Mr. Crawley will rest before I start my
8 case?

9 THE COURT: Yes, sir.

10 MR. ENGLISH: Thank you, Your Honor.

11 THE COURT: All right. Let's get our jury back in,
12 Joe.

13 NOTE: At this point the jury returns to the
14 courtroom; whereupon the case continues as follows:

15 JURY IN

16 THE COURT: All right, please be seated.

17 Mr. Crawley, did you wish to present any evidence in
18 your case, sir?

19 MR. CRAWLEY: No, sir, Your Honor.

20 THE COURT: All right. Then, Mr. English.

21 MR. ENGLISH: Thank you, Your Honor. Your Honor, at
22 this time I would like to call my client, Alex Orellana, to the
23 stand.

24 THE COURT: All right, please come forward and be
25 sworn, sir.

1 NOTE: Defendant Orellana Montalvo is sworn.

2 THE COURT: Please go ahead whenever you are ready.

3 MR. ENGLISH: Thank you, Your Honor.

4 JOSE A. ORELLANA MONTALVO, the defendant herein,
5 called in his own behalf, first being duly sworn, testifies and
6 states:

7 DIRECT EXAMINATION

8 BY MR. ENGLISH:

9 Q. Sir, would you please state your full name, spelling each
10 portion of it so Mr. Linnell can take it down.

11 A. Yes. It's Jose Alejandro Orellana Montalvo. J-o-s-e
12 A-l-e-j-a-n-d-r-o O-r-e-l-l-a-n-a M-o-n-t-a-l-v-o.

13 Q. And for the record, are you the defendant in this case?

14 A. Yes, I am.

15 Q. Now, what should we call you?

16 A. You can call me Jose or Alex.

17 Q. Which do you prefer?

18 A. Alex.

19 Q. Well, Alex it will be. Regarding -- is it fair to say you
20 prefer to be called Alex Orellana?

21 A. Yes, I do.

22 Q. Why is that?

23 A. You know, I've been here for a very long time and I've
24 always got grief for my actual real name, Jose, so I have gone
25 to the more Americanized, which Alejandro in English is

1 Alexander. So I go by Alex. And my last name Orellana from my
2 real father's last name.

3 Q. How old are you?

4 A. I am 25 years of age.

5 Q. Are you a U.S. citizen?

6 A. Yes, I am.

7 Q. Where were you born?

8 A. I was in San Salvador, El Salvador.

9 Q. How long have you been in the United States?

10 A. I have been in the United States for about 18 years.

11 Q. Who do you live with here?

12 A. I live with my girlfriend, I have a child, and her father,
13 and my stepdaughter.

14 Q. And how much education have you had in the United States?

15 A. I went to elementary school, I went to middle school. I
16 dropped out of high school because of my learning disability.
17 I had a hard time reading and writing. So I went to a military
18 school call Commonwealth Challenge of Virginia, I graduated
19 from there. And when I went to do my GED, unfortunately, I did
20 fail my GED due to my disability of learning with my writing
21 and my reading.

22 Q. How long was this military school?

23 A. It was approximately six months.

24 Q. And where was it located?

25 A. It was located in Virginia Beach, Norfolk.

1 Q. Did you live there when you were going to school?

2 A. Yes, I did live there. I was only allowed to visit my
3 house two times out of the entire time I was there, but that
4 was only of my good behavior. If I did not behave well, I was
5 not allowed to go back home.

6 Q. What learning disabilities do you have?

7 A. I am having problems reading and writing. Also
8 mathematics. I don't know why, it just never stuck.

9 Q. Now, what is your current occupation?

10 A. I work at a Marriott Hotel. I do night auditing, also as
11 front desk agent.

12 Q. Now, when was your last visit to El Salvador?

13 A. My last visit was July 17 through the 25th, if I'm not
14 mistaken.

15 Q. Now, why did you go there?

16 A. I had -- before I went, I was actually into a very bad
17 argument with my fiancée -- or my girlfriend, sorry. We had
18 arguing -- argument about our financial issues.

19 My son also suffers from spina bifida, which is a
20 really bad case of spinal cord. He had just recently came out
21 of surgery. And due to his disabilities, I was -- couldn't
22 find work because of his physical therapy that he had to go. I
23 got into a really bad argument with her. I called my father, I
24 told him what was going on, I was depressed, I didn't know what
25 to do.

1 My father offered and he said, you know, let me see
2 if I can find a cheap plane ticket, you know, come over here
3 where I'm at, I'm doing some renovations --

4 MR. FITZPATRICK: Objection, to the hearsay.

5 MR. ENGLISH: Your Honor, it's not offered --

6 THE COURT: Overruled. I will allow it.

7 A. My father told me to come help him do some renovations for
8 the house that he is selling over there. He called me back, he
9 said, look, I found a ticket, just come over, you know, just
10 relieve some stress.

11 So I proceeded and I went to El Salvador to help my
12 father renovate his home.

13 BY MR. ENGLISH: (Continuing)

14 Q. What did you do while you were there?

15 A. Helped my father do paintings, we painted the walls. A
16 little bit of electrical work, I wasn't really too familiar
17 with it, but mostly just painting.

18 Q. Did you meet anyone there who is of significance in this
19 case?

20 A. Yes.

21 Q. Who was that?

22 A. I met a person named Kevin Joel Lainez Lopez.

23 MR. FITZPATRICK: Your Honor, I object to the form of
24 a question. It assumes facts not in evidence. Significance to
25 the case.

1 MR. ENGLISH: Your Honor, if may have a moment, I can
2 connect it.

3 THE COURT: Go ahead. Overruled.

4 BY MR. ENGLISH: (Continuing)

5 Q. And after you came home, did you hear from this Kevin
6 again?

7 A. Yes, I did.

8 Q. And how did that happen?

9 A. The morning of August 10 when all this occurred, I
10 received a small phone call from Mr. Kevin. He called me --

11 THE COURT: Let me interrupt you for just a moment.
12 I think certain witnesses that testified for the Government
13 that are subject to recall have come into the courtroom, not
14 understanding -- Agent Honicker, was he subject to recall?

15 MR. FITZPATRICK: No.

16 THE COURT: Oh, not subject to recall.

17 MR. FITZPATRICK: Agent Honicker is free to go or
18 stay.

19 THE COURT: All right. My mistake. Thank you.

20 Okay, go ahead.

21 BY MR. ENGLISH: (Continuing)

22 Q. Please continue.

23 A. So that morning I received a small call from Mr. Kevin.
24 He had asked me as a favor if there was any way possible that I
25 go to the airport and pick up an individual --

1 MR. FITZPATRICK: I apologize, Your Honor.
2 Objection. May we approach?

3 THE COURT: Yes.

4 NOTE: A side-bar discussion is had between the Court
5 and counsel out of the hearing of the jury as follows:
6 AT SIDE BAR

7 THE COURT: This is all hearsay. I mean, I allowed
8 the question about the father because I knew he could testify
9 about what he did. How are you getting this in?

10 MR. ENGLISH: Your Honor, under if FRE 801(d)(2)(E),
11 a co-conspirator statement, this Kevin is the person who asked
12 him to go to the airport who had constant contact with him, who
13 was the puppet master who told him what to do, and is obviously
14 the person who dispatched the co-defendant. That is a
15 reasonable inference to make from this.

16 He is prepared to give his full name, his address,
17 his phone number, and describe everything he did. He will
18 explain how he met the person, and why he trusted the person,
19 and why he did what he did.

20 So he is the person -- we have had the texts. We
21 have had the phone records showing the telephone calls back and
22 forth between him and this person in El Salvador. He is going
23 to identify who the person is and say what was said during
24 those telephone conversations.

25 MR. FITZPATRICK: Your Honor, first of all, it has to

1 be a co-conspirator statement in furtherance of the conspiracy.
2 I don't see that.

3 Even so, it has to have some indicia of reliability.
4 There is no way in the world to test the reliability of this
5 statement. It is wholly inconsistent with the rest of the
6 evidence. And he is not going to be able to put on any other
7 testimony to support the reliability.

8 So the prejudicial effect of these statements
9 outweigh any relevant value, and I don't see any relevance.

10 THE COURT: Mr. Crawley wants I think to interject as
11 well.

12 MR. CRAWLEY: I guess the concern I am going to have,
13 Your Honor, is if he going to testify that my client knows this
14 person -- because the inference he just made was that he is
15 going to identify this person as the person who communicated
16 with my client.

17 MR. ENGLISH: No, sir, Your Honor. My client will
18 testify he doesn't know the co-defendant and had never seen him
19 before August 10. But there has been a lot of testimony about
20 someone in El Salvador from a number there who is telling the
21 co-defendant what to do.

22 My client is going to explain what he was told to do.
23 Clearly some conspiracy exists to get the cocaine into the
24 country. My client was told to pick the person up in the
25 airport.

1 My whole defense is he was sent to pick up someone
2 without knowing what it was. He is going to identify who the
3 person is and tell us move by move what the person told him to
4 do. And also to establish why he trusted the person.

5 If I can make a proffer what he will say, it is that
6 his father was friends with someone who ran a hardware store.
7 And for years he had bought supplies from him to renovate his
8 house that he had there. They went to a party for a girl who
9 had turned 15, which is a big deal in Hispanic culture, he met
10 the person's nephew, who was this Kevin who was there, and they
11 exchanged phone numbers.

12 So when Kevin called him and asked him to pick up
13 somebody from the airport, and he told him he would give him
14 \$100 to pay him to do it, and would pay \$50 for his expenses,
15 he had no reason to mistrust what was being said there.

16 He will further testify that when he was at the
17 airport, he got a call from his father's telephone that was
18 used by this Kevin, who checked on how he was doing.

19 His father will testify that when they were there and
20 they went to the party and they met the people, on August 10,
21 he was invited by the hardware store owner, Kevin's uncle, to
22 go to a cabana at a beach. And while he was there, Kevin's
23 phone did not work, so he used his phone, that is one of the
24 calls we have which is identified, the name is Poppa, the
25 person used that phone to call my client to tell him what to

1 do.

2 So the Government has put in all this evidence of all
3 these calls and they say it is proof of the conspiracy. And we
4 are entitled to show what happened, and my client was involved
5 to the point where was being manipulated by someone to go
6 around -- even assuming -- you know, he says, it's true, he had
7 no knowledge they were drugs -- some puppet master was telling
8 him where to go.

9 And we want to show who the person is. We will give
10 the Government the full identity of the person. We will give
11 the name, address and phone number. And without this
12 testimony, we have no defense.

13 MR. FITZPATRICK: Your Honor, may I respond?

14 THE COURT: Yes.

15 MR. FITZPATRICK: That theory completely falls apart
16 by the evidence in the case, and that's why it should be
17 excluded.

18 At 6:40 there is a WhatsApp message from the
19 defendant to his dad, Pops. And he says, call me.

20 And 6:54 he receives a call. He then at 7:10 he gets
21 another WhatsApp message that says, okay, I told him to go to
22 the Marriott. Right.

23 So his client is calling his dad, said, call me. He
24 texted him.

25 This theory that his dad gave the phone to someone

1 else doesn't make any sense.

2 MR. ENGLISH: Your Honor, I respectfully submit, that
3 is something they can cross-examine him on, and the jury can
4 decide. We would have the two witnesses, my client and his
5 father, who will testify to that. And they can attack it
6 however they want.

7 But it is our theory of defense, and we are entitled
8 to put on the evidence, however thin the Government may think
9 it is.

10 THE COURT: How is it admissible?

11 MR. ENGLISH: That's what I am trying to --

12 THE COURT: It is not in furtherance of a conspiracy.
13 You are denying that a conspiracy existed. How is this --

14 MR. ENGLISH: There was a conspiracy between the
15 person in El Salvador and the people on the other end who want
16 to get the drugs. And asking my client to pick up the person
17 and move him, it shows the conversation is in furtherance, even
18 if my client is not a member of the conspiracy, he is being
19 used by the conspiracy to move the person with the drugs to
20 where he is supposed to be.

21 So the statements that they make to him to use him
22 are admissible under 801(d)(2)(E). The same way if someone
23 went to an airport to buy a ticket in furtherance of a
24 conspiracy to go -- what they say, to buy the ticket, would be
25 admissible, to a ticket agent, it's in furtherance of the

1 conspiracy even though the ticket agent is not part of the
2 conspiracy, what they said.

3 MR. FITZPATRICK: That last example though, that
4 wouldn't be true. We would not be able to get the statements
5 of the ticket agent in through 801(d)(2)(E).

6 MR. ENGLISH: Not the statement of the agent, but
7 what the person said to the ticket agent.

8 THE COURT: Mr. Crawley.

9 MR. CRAWLEY: I would, and I have never done this, I
10 would join the federal government in objecting to this notion
11 that he is a co-conspirator because there is nothing that he
12 has presented to us that would support that this person Kevin
13 is a co-conspirator or even exists.

14 So every case I have had with the Government in which
15 there is a co-conspirator, even if he was an unindicted person,
16 we knew at least that this person existed. This is just
17 something out of the air.

18 THE COURT: This is totally inadmissible. It doesn't
19 come in under 801. The objection is sustained.

20 MR. ENGLISH: Your Honor --

21 THE COURT: What do you have left that you think you
22 can put on without this story?

23 MR. ENGLISH: Your Honor, without him saying someone
24 asked him to go pick someone up and that he did not know the
25 person, why he went to the airport, I have no defense.

1 They have put in all the circumstantial evidence to
2 show he has gotten phone calls from El Salvador and that he was
3 at the airport.

4 THE COURT: Right.

5 MR. ENGLISH: We are entitled to explain why he's
6 there.

7 THE COURT: He can say, I was asked to come pick
8 somebody up at the airport, not for the truth of it, but to
9 explain why he went to the airport that day. And beyond that,
10 I don't see how you could get any of this in. It's just not
11 co-conspirator statements. I mean, it is not a proper
12 exception. It's all hearsay.

13 So you put your defense together the way -- you look
14 at the evidence, do what you can to put a defense together, but
15 this one isn't going to fly, it is not admissible.

16 I don't know what else to tell you. Your exception
17 is noted, of course.

18 MR. ENGLISH: Yes, sir.

19 THE COURT: I think he can explain, I went to the
20 airport that day to pick up a passenger that I had been asked
21 to pick up. I was told I was going to make \$150. And I think
22 you're stuck with that.

23 MR. ENGLISH: Yes, sir.

24 THE COURT: All right.

25 NOTE: The side-bar discussion is concluded;

1 whereupon the case continues before the jury as follows:

2 BEFORE THE JURY

3 MR. ENGLISH: May I, Your Honor?

4 THE COURT: Mr. English, go ahead.

5 BY MR. ENGLISH: (Continuing)

6 Q. As a result of this telephone call, what did you do?

7 A. Pretty much I went to the airport to pick up the
8 individual. At that point I did not know what he looked like
9 or who he was. I still don't even know who he is.

10 When I went to the airport, I pulled up, I parked. I
11 went to the waiting area. I stood there and I waited for like
12 an hour. After an hour, you know, I got the phone number of
13 the individual. I tried calling it. It would not even ring.

14 Finally I got ahold of him, asked him where he was.
15 He didn't specifically tell me where he was. I told him I will
16 be downstairs.

17 So I went and I moved to the downstairs area. I sat
18 there and I started waiting. Smoked a cigarette.

19 After that, as you see, the pictures that they
20 showed, I was actually looking at the lot number. Not once was
21 I aware that was a detective. I mean --

22 Q. Hold on. Let me ask you, did you know the name of the
23 person you were supposed to meet at the airport?

24 A. The name of the person?

25 Q. Yes.

1 A. No.

2 Q. How did you know who you were looking for?

3 A. Just by a picture.

4 Q. Where did you get the picture?

5 A. I got it through a text message.

6 Q. From whom?

7 A. From Mr. Kevin.

8 Q. Now, so what did you do at the airport?

9 A. I sat and I waited to see if maybe somebody came out of
10 the International gate. And I just waited.

11 Q. And did you eventually go somewhere else?

12 A. Yeah. Well, I mean, after awhile waiting, I really got
13 frustrated. Like I was like just done, I didn't want to wait
14 anymore.

15 So I was like, really, it was like, okay, well, you
16 know, I'm leaving. Like this is really wasting my entire
17 afternoon. I was literally on the beltway making my home, I
18 received a call from Mr. Kevin once again. He insisted that
19 the person had moved to an area where Pollo Campero was.

20 I went around the area. He did not tell me that the
21 person was inside of the Pollo Campero. He just said he was
22 around that area.

23 So I went to that area, I drove around. I got
24 there -- actually, I went into a place called Pho 75, and I
25 actually ate at the Pho 75 because I was actually starving, I

1 hadn't eaten all day. I sat down, I ate some Pho.

2 At that moment I actually spilled something on my
3 shirt, it was water that I spilled on my shirt. I went back to
4 my car after I was done eating and I changed my shirt. We had
5 recently came back from like a beach trip, and I found a black
6 Lacoste polo shirt in back seat. So I took the red shirt off,
7 I put the black one on, and I grabbed the shirt and I put in
8 the glove compartment of my car.

9 Q. Did Kevin tell you what he would give you to go pick this
10 person up?

11 A. Yes. It was \$100 for myself. And also, he would give me
12 \$50 for gas, parking, and any type of tolls that I will
13 encounter going towards Dulles.

14 Q. And he didn't tell you who you were picking up?

15 A. No, he didn't tell me the name, I did not know the
16 person's name, I've never met him in my life. All he sent was
17 a picture of the guy.

18 Q. And did there come a time you got a telephone call from
19 your dad's phone number?

20 A. Yes, I did actually. And to my surprise, it wasn't my
21 dad, it was actually Mr. Kevin who called me from my father's
22 phone.

23 Q. Now, at the time you were arrested by the police, did you
24 have cash on you?

25 A. Yes, I did.

1 Q. How much?

2 A. I had \$900. \$900.

3 Q. And where did that money come from?

4 A. That money came from -- I had a Honda Civic, a 1992, EG
5 four door, that I had recently sold so I can come up with money
6 to pay my rent.

7 Q. And did you know there was a digital scale in the vehicle
8 you were driving?

9 A. No, I was not aware of any digital scale being in the car.
10 The car doesn't even belong to me. Like the car belonged to my
11 parents.

12 And I wasn't even supposed to have the car that day.
13 The only reason why I had the car was because I was supposed to
14 get a tire change for my mother. And, I mean, I just took it
15 because I'm expecting somebody to come from the airport with
16 luggage. So I wasn't going to take a smaller vehicle expecting
17 somebody coming from the airport with a bunch of bags. That's
18 what you expect.

19 Q. Now, had you ever seen the gentleman sitting here, your
20 co-defendant, before August 10?

21 A. Absolutely not. I've never seen him or met him in my
22 life.

23 Q. What's the closest you came to him that you're aware of on
24 August 10?

25 A. I'm sorry, say that one more time.

1 Q. What's the closest you came to him that you are aware of
2 on August 10?

3 A. When I pulled over to the bus station, honestly, when I
4 finally recognized him, like I finally looked at him, and he
5 was the only person there with like a bag. And I was just
6 like, okay, maybe that's the guy. But at that same -- go
7 ahead.

8 Q. And did you talk to him some during that day?

9 A. No.

10 Q. Did you have a telephone?

11 A. I did have a telephone call, but I never talked to him
12 face-to-face. We never exchanged --

13 Q. Did you speak to him over the phone?

14 A. Yes.

15 Q. And in what language?

16 A. Spanish.

17 Q. So did he ever get into your vehicle?

18 A. Absolutely not.

19 Q. Well, what was your purpose in meeting him?

20 A. I was just supposed to pick him up. I was told he had a
21 very bad English -- not English, Spanish. He didn't know how
22 to speak English. He had a language barrier. All I was
23 supposed to do was just go check him into a hotel and get him a
24 Friends and Family discount that I'm offered because my brother
25 is actually a manager at Marriott.

1 So I was supposed to just give him like a discount,
2 check him in, and then leave.

3 Q. Did he ever get into your vehicle?

4 A. No.

5 Q. Why not?

6 A. As soon as I went to pull up to pick him up, I noticed I
7 had a message from the WhatsApp app. I looked at the app, I
8 opened the message real quick. I glanced down, and it said --
9 the message: Marriott, make sure he doesn't have a tail.

10 And that automatically was just like what, like there
11 is something wrong. And not only just that, like I questioned
12 Mr. Kevin when I received a call from him earlier. I was like,
13 you know, what's going on? You guys have me going up and down
14 like -- it's just like it's fishy, you know.

15 So when I pulled up, I read that message, and I
16 looked at the guy, and I was just like, this is bad news. So I
17 left. And I never let him in my car.

18 Q. How long after that were you arrested?

19 A. I didn't even get to the next light. I noticed there was
20 police behind me, and I pulled over right away.

21 Q. Did you know that the person you were supposed to pick up
22 was carrying drugs?

23 A. Absolutely not. I mean, when you're picking up somebody
24 from the airport, the least thing you would think that they are
25 bringing is drugs for the simple fact that they are being

1 searched, there is, you know, x-ray machines they have to go
2 through, dogs they have to go through. I would never expect
3 somebody coming out of the airport full of especially that
4 amount of drugs.

5 Q. Did you conspire with anyone in this case?

6 A. Absolutely not.

7 MR. FITZPATRICK: Objection, Your Honor, ultimate
8 issue.

9 THE COURT: Overruled.

10 BY MR. ENGLISH: (Continuing)

11 Q. Now, when this person Kevin called you and asked you to do
12 something, why did you trust him enough to do it?

13 A. I mean, I had met him in El Salvador. He had --

14 THE COURT: The objection was sustained to this
15 testimony. And so move on.

16 MR. ENGLISH: Your Honor, in that case, I have no
17 further questions.

18 THE COURT: Okay. All right. Cross-examination.

19 MR. FITZPATRICK: I'm happy to defer to Mr. Crawley
20 first if he wants to do that.

21 THE COURT: Oh, I'm sorry.

22 MR. CRAWLEY: I have nothing to add.

23 THE COURT: All right. Thank you.

24 MR. FITZPATRICK: Thank you, Your Honor.

25 THE COURT: So that last answer is stricken. You're

1 not to consider it. All right.

2 CROSS-EXAMINATION

3 BY MR. FITZPATRICK:

4 Q. In your testimony to your lawyer you stated that the first
5 time you recognized the defendant was when you pulled up next
6 to the bus stop and you saw him; is that correct?

7 A. That was first actual face-to-face contact with him.

8 Q. First face-to-face. And that was your sworn testimony
9 under oath about ten minutes ago, correct?

10 A. Yes.

11 Q. If we could put up Exhibit 52-1, please. Publish it. It
12 has been previously admitted.

13 THE COURT: Joe, I think he is going to --

14 MR. FITZPATRICK: I'm sorry, Mr. Ruelas, we will use
15 the screen. We can publish it, Ms. Morrell. 52-1.

16 51, I am sorry.

17 BY MR. FITZPATRICK: (Continuing)

18 Q. Do you recognize this photograph?

19 A. Yes.

20 Q. And this is you walking directly past Mr. Majano, correct?

21 A. Yes.

22 Q. And Mr. Majano is a distinctive looking man, correct?

23 A. I mean, his face was literally glued to his phone and I
24 wasn't paying --

25 Q. His face is glued to his phone?

1 A. As you can see, he's looking at his phone.

2 Q. He's looking at his phone. He has a shaved head?

3 A. Yeah.

4 Q. He is thick in stature?

5 A. You would say, yes.

6 Q. Can you show the pictures that were sent to Mr. Majano's
7 phone around 12:41, Exhibits 95 and 96.

8 MR. ENGLISH: Objection, Your Honor, this is an
9 enlarged photograph. It's not the same photograph my client
10 saw on the phone.

11 A. Well, there is --

12 THE COURT: Stop. The objection is overruled. You
13 may redirect on that point, Mr. English.

14 Listen to the question and answer the question.

15 THE WITNESS: Yes, sir.

16 BY MR. FITZPATRICK: (Continuing)

17 Q. This is the same picture that was on your iPhone, correct?

18 A. Yes.

19 Q. When you receive a picture on your iPhone, you can tap on
20 the picture, it can expand and occupy the entire screen; is
21 that correct?

22 A. That's correct.

23 Q. All right. Can we go to the next picture, please.

24 You also received this picture at 12:41 from -- you
25 call him Mr. Kevin. Unfortunately, your father calls him

1 Kamalion. Do you remember that?

2 A. There was actually no name on my phone.

3 Q. Okay. And when people -- and you were using WhatsApp,
4 correct?

5 A. That is correct.

6 Q. That's correct. And you have heard testimony in this case
7 about WhatsApp, haven't you?

8 A. Yes.

9 Q. That's an end-to-end encryption device, right?

10 A. You can say that.

11 Q. And you can definitely say that. And both parties have to
12 agree to go into the chat, correct?

13 A. That is correct.

14 Q. That is correct. Because both parties have to know what
15 the encryption codes are, correct?

16 A. It's like a text message app. You don't necessarily --

17 Q. It's a text message app. Answer my question. You have to
18 know the code to type into it so you can access the message,
19 correct?

20 A. No.

21 Q. It's an end-to-end -- what does encryption mean?

22 A. You would say it's an end-to-end, but that application is
23 mostly used for texting.

24 Q. It's secure?

25 A. And the phone, you add the phone number, and then you send

1 a message like you would in any other phone. It's not like you
2 will have to enter a special code in order to get in contact
3 with that person.

4 Q. Right. And when you engage in an encrypted chat, those
5 are secured exchanges where the parties have to agree with each
6 other to speak securely, correct?

7 A. I wasn't aware that it was a secure encrypted. El
8 Salvador mostly uses those because in El Salvador you actually
9 have to have minutes or purchase cards. So what most people do
10 is they usually just text through WiFi because, I mean, nobody
11 over there has --

12 Q. We're talking about WhatsApp here.

13 A. I understand that. But I'm just trying to let you know
14 that most people in El Salvador don't have the money to be
15 going back and forth buying cards, which is credits, to talk
16 through text. So they usually just use WhatsApp because it's a
17 free app that you use to communicate with somebody through
18 WiFi.

19 Q. It's free, and it's a secure app and you have to agree to
20 chat with the person under WhatsApp, correct?

21 A. You don't have to agree. You just enter their phone
22 number, and then you just say -- you just send them a message
23 and then they receive it. It's not like a special code you
24 receive.

25 Q. Let's put up 52.1 again please. 51, I am sorry. 51.

1 So that person that you saw in the pictures on your
2 iPhone, expanded on your screen, shaved head, broad shoulders,
3 you walk within two feet of him -- you're telling this Court
4 and this jury that you didn't recognize him here inside Pollo
5 Campero? The first time you recognized him was out on Elden
6 Street?

7 A. I did not -- I did not see him. I wasn't really paying
8 attention to my surroundings. I was just mostly just trying to
9 get to the bathroom, I had to pee really bad.

10 I was just trying to go to the bathroom. I wasn't
11 paying attention to my surroundings.

12 Another thing is that I did have my prescribed
13 glasses that day, which are the ones that I have today. I did
14 not -- was not wearing my prescription glasses that day.

15 Q. All right. And you testified in response to counsel that
16 the person you were picking up had difficulty with the English
17 language; is that right?

18 A. Yes. Well, I was under the impression that he had no --

19 THE COURT: Listen to the question and answer the
20 question that you are asked, please, sir.

21 Q. You are bilingual, correct?

22 A. Yes.

23 Q. You speak English and Spanish fluently?

24 A. That is correct.

25 Q. Okay. And you testified that you've had a job as a night

1 auditor; is that correct?

2 A. Actually, I just recently received that job. Prior to
3 that I was not working due to my son's disability, which he had
4 to be -- I had to take him to physical therapy almost every
5 single day.

6 THE COURT: Listen to the question.

7 THE WITNESS: I'm sorry.

8 THE COURT: And answer the question that you are
9 asked. Okay?

10 THE WITNESS: Yes, sir. I'm sorry.

11 THE COURT: And it should be -- most of these are
12 yes/no questions.

13 THE WITNESS: Okay. I'm sorry.

14 THE COURT: And then if Mr. English wants to ask you
15 further about some of these issues, he can get up on redirect
16 and ask you to give a little more information.

17 But right now, listen to the question and answer the
18 question.

19 THE WITNESS: Sorry. I have never done this before.

20 THE COURT: Please continue.

21 MR. FITZPATRICK: Thank you very much, Your Honor.

22 BY MR. FITZPATRICK: (Continuing)

23 Q. How long have you been working as a night auditor?

24 A. Less than a month.

25 Q. Okay. And you've received training in that?

1 A. Yes, I have.

2 Q. And they have put you out on the floor and you're working
3 as a night auditor?

4 A. I also do day and night auditor as well.

5 Q. And the night auditor position is what, 11 p.m. to 7 a.m.?

6 A. Exactly.

7 Q. All right. And as a night auditor, your job is to
8 reconcile the books for the hotel for that day; is that
9 correct?

10 A. I don't understand what that word "reconcile" means.

11 Q. You do the receipts for, the daily receipts for the hotel?

12 A. I mostly just check people in if they come. And whenever
13 they need to buy like sodas or anything, there is like a market
14 right next to the cashier. I do that. And I just count the
15 drawer, make sure it is at \$400.

16 Q. Exactly. So you reconcile the drawer and you make sure
17 that the books are correct?

18 A. Yes.

19 Q. All right. That involves a little bit of math, right?

20 A. I have a calculator. It's really not that hard. And we
21 still have a system that at the end of the day --

22 Q. I don't think I have a question in front of you.

23 A. Oh, I am sorry.

24 Q. Do I?

25 A. No, sir.

1 Q. Okay. I want to show you -- let's take the Government's
2 Exhibit 43, please.

3 No, excuse me, 36, it's the red shirt. It's a
4 physical object, physical item. You can pull that out.

5 You recognize that, right?

6 A. Yes. This is my Armani Exchange shirt.

7 Q. Oh, it's an Armani Exchange shirt?

8 A. Yes, that's what it is.

9 Q. Can you hold it up, please, for the jury. That's the
10 front of it, right? You can stand up.

11 A. Oh, I am sorry.

12 Q. Show it to the jury, please. There are no stains on the
13 front of that shirt, right?

14 A. No, sir. Actually --

15 Q. You can turn it around. Turn the shirt around. No stains
16 on the back of shirt, right?

17 A. No.

18 Q. All right, you can sit down. You testified earlier that
19 you spilled some water, right?

20 A. Yes.

21 Q. This was when you were at Pho 75?

22 A. Yes.

23 Q. All right. Now, you testified that you ate at Pho 75.
24 That must have been at what, approximately 6 o'clock?

25 A. I don't recall the time. I'm sorry.

1 Q. You don't remember that?

2 A. I don't remember the exact time.

3 Q. I am not asking for an exact time. Give me an approximate
4 time.

5 A. I would be incorrect if I just give you a random time.

6 Q. Why would you be incorrect?

7 A. It was later, it was later that afternoon, I was around
8 the area around the time. I mean, you can say around 6, but I
9 can't say it was at exactly 6:43 or 6:45 because that would not
10 be correct.

11 Q. Okay. Then you recall going into the Pollo Campero,
12 correct?

13 A. Yes.

14 Q. And you ordered food there as well?

15 A. Yes.

16 Q. Okay. And did you order food in the Pollo Campero because
17 of what? What was your reason?

18 A. I actually got Camperitos, which is like little chicken
19 nuggets, I was actually going to bring over to my son, with
20 french fries. And the soda was for myself.

21 Q. You live in Woodbridge?

22 A. Yes.

23 Q. That's about an hour at a minimum from Dulles Airport?

24 A. Yes.

25 Q. All right. Isn't it true, sir, that you went into Pollo

1 Campero because you are performing countersurveillance, you saw
2 Mr. Majano in there, and you were gauging the situation; isn't
3 that true?

4 A. No.

5 Q. And isn't it true that you ordered food so you wouldn't
6 make -- you wouldn't draw attention to yourself, you wouldn't
7 look conspicuous; isn't it true?

8 A. No.

9 Q. It's still your testimony today in front of this jury that
10 you went in at 7:30 to Pollo Campero to buy chicken nuggets and
11 french fries for your son, is that your testimony?

12 A. Yes.

13 Q. All right. Thank you. If we can turn to Government's
14 Exhibit -- let's go to 93, please. The transcript.

15 Oh, 123, my apologies. Let's go to 123.

16 You heard the call earlier that we played that had
17 yourself on the call, do you remember that?

18 A. Yes.

19 Q. There is no doubt in the world that that's you, right?

20 A. That is correct.

21 Q. You're not going to say that is somebody else?

22 A. Absolutely not, that's me.

23 Q. Okay. And you are speaking with -- was that your
24 girlfriend?

25 A. Yes, sir.

1 Q. Okay. If we can turn to, let's turn to page 1. Do we
2 have that up there.

3 Do you see page 1 up there?

4 A. Yes, I do.

5 Q. And you begin the phone call and you're speaking in
6 English, correct?

7 A. Yes.

8 Q. And you've already testified that you are bilingual, your
9 girlfriend is bilingual; is that correct?

10 A. That's correct.

11 Q. You're having a pleasant exchange in English; is that
12 correct?

13 A. Yes.

14 Q. And then turn to page 2 please, Ms. Morrell. Line 20.

15 You switch over to Spanish; isn't that correct?

16 A. Yes.

17 Q. And you switch into -- immediately switch into the Spanish
18 language when you want to talk about a sensitive, discreet
19 matter; isn't that right?

20 A. No. I usually just like to switch my languages with her.

21 Q. Okay. But at this very moment you said, in Spanish: Did
22 you block my telephone.

23 Is that correct?

24 A. That is correct.

25 Q. And then you had a long conversation about accessing your

1 telephone; isn't that correct?

2 A. That is correct.

3 Q. And it's correct that you were having your girlfriend log
4 into the iPhone Web site to access your phone in order for your
5 girlfriend to erase it, correct?

6 A. Erase, yeah.

7 Q. You were going to erase the contents of your phone; isn't
8 that correct?

9 A. Not all the contents. It was more personal matters with
10 me and her, private pictures that I had, which I told the
11 detective that I had in my possession of my phone when they
12 started going through my phone as I was being arrested.

13 Q. You never mentioned in this phone call private pictures
14 between you and your girl friend? The first time you've said
15 that is today; isn't that true?

16 A. Yes.

17 Q. Okay. So you never said that on this call, correct?

18 A. No.

19 Q. In fact, you said, erase all?

20 A. Yes.

21 Q. You wanted the entire phone erased, right? And you were
22 making this call after you had been arrested and charged in the
23 federal court and arraigned; is that correct?

24 So you knew you were under a federal charge when you
25 asked your girlfriend to erase the contents of your phone; is

1 that correct?

2 A. That's correct.

3 Q. And isn't it true, Mr. Orellana, that you knew that you
4 had a number of phone calls with co-conspirators on your phone
5 and you had a number of WhatsApp messages on your phone, and
6 you had the photographs of him on your phone; isn't that
7 correct?

8 A. That is correct.

9 Q. And yet you still -- and that's when you asked your
10 girlfriend to erase your phone, correct?

11 A. Correct.

12 Q. All right. If we can go to page 5, please. At the top of
13 page 5, line 73 and 74. You and your girlfriend are speaking
14 in English, correct?

15 A. Yes.

16 Q. And you said: You know, I slept, I slept for a little bit
17 yesterday.

18 That's what you said in English, right?

19 A. Correct.

20 Q. And then your girlfriend responds, she begins: Yeah,
21 that's not -- and then goes into the Spanish. And that's where
22 she said: Yeah, that's not, that's not the code. That's like
23 I told you.

24 And then again you start talking about wiping this
25 phone in Spanish rather than English, correct?

1 A. Correct.

2 Q. Now, the reason why you were doing that, you were under
3 the impression that the Government would not be able to
4 understand your Spanish calls, correct?

5 A. No.

6 Q. Didn't you have an understanding that it was a more secure
7 way for you to communicate with your girlfriend in the Spanish
8 language rather than the English language?

9 A. Either way I knew it was going to get translated if it was
10 brought up to court. I mean, the beginning of the phone calls
11 it says, this phone call is being monitored and recorded.

12 Q. All right.

13 A. I am pretty sure you guys can get an interpreter.

14 Q. Okay. If we can turn to page 6, please. Finally, on line
15 97, you put -- you recalled the name of your pass code, which
16 is name of your child and 0223. And you communicated that to
17 your girlfriend, correct?

18 A. Correct.

19 Q. She said: It worked, it worked.

20 Correct?

21 A. Yes.

22 Q. All right. And then you asked: It worked?

23 You asked her back? You wanted to confirm that,
24 correct?

25 A. Correct.

1 Q. Because you were really concerned to get into that phone,
2 aren't you?

3 A. I mean, I can't really do much, I'm in jail at this point.

4 Q. You can't wipe it yourself? Right? You can't do it
5 yourself, so you need someone else to help you, right?

6 A. Yes, you can say that.

7 Q. Well, you can't say that -- it can also be true, right?

8 A. True what, I'm sorry?

9 Q. It's true that you couldn't wipe the phone yourself, you
10 needed someone else to do it for you? That's a true statement,
11 correct?

12 A. I mean, yes, but at the same time the police officers
13 already had my phone. And when they were going through my
14 phone, I told them they didn't have a warrant to go through my
15 known, and they all laughed at me and told me that they did not
16 need a warrant to go through my phone, that they could get the
17 warrant from the judge later.

18 Q. Okay. And that's why two days later you were asking your
19 girlfriend --

20 A. I was upset.

21 Q. Let me ask my question. That's why you were asking your
22 girlfriend two days later to wipe your phone, correct?

23 A. Yes. I was upset.

24 Q. Now, we're hearing -- you don't make excuses for your
25 conduct, do you?

1 A. I don't understand your question.

2 Q. Do you know what an excuse is?

3 A. Yes.

4 Q. Okay. Do you make excuses for your conduct?

5 A. No.

6 Q. Okay. Because we have heard quite a few excuses so far.

7 I just want to make sure we were on the same page.

8 MR. ENGLISH: Objection, Your Honor, that's not a
9 question.

10 THE COURT: Sustained.

11 MR. FITZPATRICK: Thank you, Your Honor.

12 BY MR. FITZPATRICK: (Continuing)

13 Q. Now, after she said it worked, you queried her: It
14 worked?

15 And then she responded: Yes, okay, but I don't know
16 how the hell to erase that shit.

17 And then you responded: Put it to erase if you can,
18 or within the day today for it to close and erase all the,
19 everything.

20 Right, you said that? Line 101.

21 A. Yes.

22 Q. Okay. So you want her -- you're not going to deny that
23 you want her to erase everything on that phone, correct?

24 A. Not everything, no.

25 Q. Mr. Orellana, you just said it there. You just said

1 that's what you said. On August 12 you told her: For it to
2 close and release all the, erase everything.

3 Correct?

4 A. Correct.

5 Q. All right. Turning to page 7, which is the continuation
6 of entry 109. Well, beginning -- I am sorry. Let's begin on
7 the bottom of page 6, please.

8 You said -- this is you speaking once again in
9 Spanish: It should say so there. It must say so there. Put
10 it in lost mode, or I don't know what the F, pause. Or it says
11 there, erase all.

12 Right? So again, a second time, you're telling her
13 to erase all, correct?

14 A. Correct.

15 Q. All right. Let's turn to page 11, please.

16 In line 196, this is your girlfriend speaking. And
17 once again you're speaking in English; is that correct?

18 A. Yes.

19 Q. And you're speaking about social things, about partying
20 and things of that nature; is that correct?

21 A. It was actually my girlfriend's mother's birthday that
22 weekend.

23 Q. So, fine, you're talking about -- in English about your
24 girlfriend's mother's birthday; is that correct?

25 A. I guess, yes.

1 Q. Well, that's what you just said?

2 A. I mean, I'm just letting you know that that's what was
3 going on that weekend.

4 Q. Okay. And you're speaking in English?

5 A. Yes, sir.

6 Q. Okay. And then in 197 you break in in Spanish -- and this
7 is continuous. We heard this recording earlier, do you
8 remember that?

9 A. Yes.

10 Q. So you go right from that English dialog into Spanish, and
11 you say: Does my say off line.

12 Do you remember that?

13 A. Correct, yes.

14 Q. And your girlfriend responds: Yeah, they haven't turned
15 it on.

16 But you asked the question: No, but did they get it?

17 Do you remember that?

18 A. Yes.

19 Q. Okay. And your girlfriend sent you some messages,
20 correct?

21 A. Correct.

22 Q. And then you're having her check on the messages, correct?

23 A. No. I am guessing she had sent me some messages later
24 that day, and she said that they never got received because on
25 the iPhone it says Delivered or it just stays like blank.

1 Q. Right. And she said: They still say that they haven't
2 arrived, the messages that I sent to you. So they haven't
3 opened it yet, they haven't --

4 And you get frustrated at you point and you say:
5 Well, I don't know. That isn't worth shit to me.

6 Correct?

7 A. Where does it exactly say that?

8 Q. On page 12, I'm sorry, page 12, line 205, 204 and 205.

9 A. I was like, yeah, I don't know, I don't care. That's what
10 it says in Spanish: Bueno, yo no sé, vale verga.

11 I don't care.

12 Q. So let's talk, let's move to page 13, please. And if we
13 have line 223. Once again, you and your girlfriend are
14 speaking in English, correct?

15 A. Correct.

16 Q. And again, more about social activities, you are talking
17 about, you know, drinking and the problems with drinking and
18 all that. That's the context of line 223, correct?

19 A. I'm very overprotective of my girlfriend, so at that time
20 I was --

21 Q. I just asked you a simple question.

22 A. Yes, correct.

23 Q. Is what you're talking about?

24 A. Correct, correct, correct.

25 Q. Is that in English?

1 A. Yes, correct.

2 Q. I know you want to talk about what you want to talk about,
3 but please answer my questions.

4 A. I am so sorry about that. You're right.

5 Q. Okay. And immediately after that you then once again turn
6 into speaking with Spanish; is that correct?

7 A. Yes.

8 Q. And you ask her, out of context, you say: What time did
9 he go pick it up.

10 Do you remember that?

11 A. Yes.

12 Q. You said that? And your girlfriend says: Huh?

13 Do you remember that?

14 A. Yes.

15 Q. And you say: Did he go pick up the pencils?

16 A. Yes.

17 Q. Okay. And then your girlfriend said: Yes.

18 And you say: And everything?

19 Do you remember that?

20 A. Yes.

21 Q. Okay. And your girlfriend says: I gave them to -- yes.
22 He, came to pick them all up.

23 A. Yeah.

24 Q. Came to pick all of those pencils up, didn't he?

25 A. Yes. I can --

1 Q. Maybe about 1,000 pencils?

2 A. No. Actually --

3 Q. How many pencils were there?

4 A. Three.

5 Q. Oh, three pencils?

6 A. Yes.

7 Q. So you're asking if someone has come to pick up three
8 pencils?

9 A. Can I say something, Your Honor?

10 THE COURT: Just listen to the question.

11 THE WITNESS: All right, sir.

12 BY MR. FITZPATRICK: (Continuing)

13 Q. No, it's your testimony -- I'm sorry, Your Honor.

14 THE COURT: Stop. So you listen to the question, you
15 answer the question. And if you can answer it yes or no,
16 answer it yes or no. And if you can't answer it yes or no,
17 say, I can't answer that yes or no.

18 THE WITNESS: Okay.

19 THE COURT: As I said, Mr. English, if he wants to
20 follow up with you, we will give you that option.

21 THE WITNESS: Okay, gotcha. Okay. I'm sorry.

22 MR. FITZPATRICK: Thank you very much, Your Honor. I
23 apologize for --

24 THE COURT: Next question.

25 BY MR. FITZPATRICK: (Continuing)

1 Q. So it's your testimony today that you were querying her,
2 questioning her about if someone came to pick up three pencils,
3 correct?

4 A. Correct.

5 Q. This is a pen, but three of these in pencil form. Okay.

6 MR. ENGLISH: Objection, Your Honor, that wasn't a
7 question.

8 THE COURT: Sustained. Let's ask questions, please.

9 MR. FITZPATRICK: Thank you.

10 BY MR. FITZPATRICK: (Continuing)

11 Q. And your girlfriend responded: Yes, yes, he came to pick
12 them all up.

13 He came to pick all of those three pencils up, right?
14 Them all up?

15 A. Yes.

16 Q. Okay. And you said: Okay.

17 So you understood what she meant, correct?

18 A. Correct.

19 Q. All right. Then: And your -- and do you have it there?

20 And your, unintelligible, do you have it there?

21 Another question. And your girlfriend responds
22 because show knows what you're talking about, she says: I
23 already took everything out. I took out everything except my
24 weapon.

25 And her weapon is her gun, right?

1 A. Yes.

2 Q. Okay. So she removed the gun from the three pencils
3 before the guys came to pick up the pencils, is that your
4 testimony?

5 You gave the okay -- well, I'm sorry, I'm
6 interrupting you. Please.

7 A. No, by all means, go ahead. What were you saying?

8 Q. No, you can answer my question.

9 A. I don't understand your question at this point.

10 Q. Okay. So you understood that your girlfriend said in
11 response your question, I'm keeping my gun?

12 But according to your testimony, I gave them the
13 three pencils? That's your understanding of what happened
14 there?

15 A. I don't recall.

16 Q. You don't recall. Okay. And then the call ends; is that
17 correct?

18 A. Yes.

19 Q. Where are those pencils today, Mr. Orellana?

20 A. I don't recall.

21 Q. You don't know where the pencils are?

22 A. Correct.

23 Q. Okay. Let's take a look at Government's Exhibit 93, the
24 WhatsApp. Put Exhibit 93 up, please. If we can go to
25 page 1218, please.

1 And at the top it's you communicating -- your
2 nickname is Ace; is that correct.

3 A. That's just the name on the WhatsApp app, yes, correct.

4 Q. That's the name you use on the WhatsApp application?

5 A. Correct.

6 Q. Okay. It's not a assigned to you. It's the one you
7 choose?

8 A. Yes, sir.

9 Q. And that's because when you're speaking to other people
10 privately, they know who they're speaking with, correct?

11 A. Yes.

12 Q. All right. And you send a message to Pops that says:
13 Call me.

14 Is that correct?

15 A. Correct.

16 Q. And on that day, you had well over -- there were well over
17 40 contacts with Pops on your phone; is that correct?

18 A. Correct.

19 Q. Let me go back for just a moment. We were speaking of
20 your shirt earlier. Now, we have already demonstrated to the
21 jury that there are no stains on your shirt, correct?

22 A. Correct.

23 Q. And it was your testimony to the agents when they
24 discovered your shirt in the glove box, that you changed your
25 shirt because you had -- you had spilled something on it,

1 correct?

2 A. Correct.

3 Q. And today your testimony is you spilled some water on it,
4 correct?

5 A. Correct.

6 Q. Okay. And this was -- and this would have been when you
7 were at Pho 75, correct?

8 A. Correct.

9 Q. All right. And did you have a glass of water or bottle of
10 water?

11 A. No, I had a tall glass of water.

12 Q. Tall glass of water. It's August 10, right? It's warm
13 out, correct?

14 A. Yes.

15 Q. You have been walking around the airport looking for
16 somebody for several hours, correct?

17 A. Correct.

18 Q. You are thirsty, it's good to have a little water, right?

19 A. I was also hungry.

20 Q. You were also hungry. Dripping a little water on your
21 shirt does not cause someone to change their shirt; isn't that
22 correct?

23 A. It was actually a large amount of water down by the bottom
24 of my shirt.

25 Q. A large amount of water. You had a glass?

1 A. I had a glass, a lot bigger than this. Like a restaurant
2 glass.

3 Q. Okay. All right. So it's your testimony in front of this
4 jury that you did not change your shirt to change your
5 appearance? Is that your testimony?

6 A. Correct.

7 Q. All right. Now, when you spilled the water on your shirt,
8 you went back to the minivan and you got the black shirt,
9 correct?

10 A. Yes. It was actually in the back side of the minivan,
11 correct.

12 Q. Correct. It was in the back side of the minivan, right?
13 There was a lot of stuff in the minivan, correct?

14 A. Correct.

15 Q. Right. And you took the red shirt and you stuffed it in
16 the glove box, correct?

17 A. I changed my shirt in the front seat because I didn't want
18 to do it in the outside. So I went, I hopped in the car, I
19 changed my shirt in the front seat, opened up the glove box,
20 and I just threw it in there.

21 Q. You hid the shirt?

22 A. No, it was not hidden.

23 Q. If it's in the glove box, it's not in plain sight,
24 correct?

25 A. I didn't think much of it, honestly. I also had my

1 passport in there, which I --

2 Q. And the black shirt is in the back seat?

3 A. Yes.

4 Q. Along with other items in the minivan, right?

5 A. It was actually in the back compartment, like the back
6 doors of the minivan. So it was in the corner of the actual
7 minivan, in the trunk.

8 Q. All right. And you have -- the person that you were going
9 to meet there, isn't it true that you were just there to pick
10 up a bag and then go on your way?

11 A. No.

12 Q. And you have no idea where you were supposed to take this
13 person, did you?

14 A. Say that one more time, I am sorry.

15 Q. You had no idea where in your expectation you were going
16 to take this person, correct?

17 A. I was going to take him to the Marriott across the street
18 and check him in there. I was actually at the Marriott waiting
19 there.

20 Q. And you are familiar with -- and you said that -- your own
21 testimony, for what it's worth, you said you were going to get
22 \$100 for doing this?

23 A. \$150. 100 for myself and 50 for any expenses, such as
24 gas, tolls, and parking at the airport, which --

25 Q. Right.

1 A. I was going to get.

2 Q. Go figure, right?

3 THE COURT: Mr. Fitzpatrick, please, just ask your
4 questions.

5 MR. FITZPATRICK: Yes, sir.

6 THE COURT: Comments are not necessary.

7 MR. FITZPATRICK: Thank you. I understand, Your
8 Honor. I apologize.

9 BY MR. FITZPATRICK: (Continuing)

10 Q. And you are familiar with -- there is another app that is
11 popular these days, it's called Uber, correct?

12 A. Correct.

13 Q. And Herndon, the Pollo Campero, and the Marriott, it's
14 about a five- to ten-minute drive away?

15 A. Correct.

16 Q. And at Dulles Airport, they even now have Uber stands,
17 don't they?

18 A. I am not sure. I am sorry, I wouldn't -- I don't go to
19 the airport very much to know that.

20 Q. And they have -- so it's -- do you take Uber?

21 A. No.

22 Q. You don't?

23 A. I have never taken Uber.

24 Q. Is it fair to say that a Uber ride, a ten-minute Uber
25 ride, or a taxi ride for that matter, to Herndon would be a lot

1 cheaper than \$150?

2 A. I wouldn't know, honestly.

3 Q. All right.

4 A. But it --

5 Q. When you returned from El Salvador, you returned on
6 July 25; is that correct?

7 A. Correct.

8 Q. And you entered into Miami, correct?

9 A. Correct.

10 Q. And did you fly from Miami back to Dulles Airport?

11 A. There was -- actually, I missed my flight back. So I was
12 actually there for like an extra day. And then I went back,
13 yeah, from Miami to International Dulles, I think it was
14 Dulles.

15 Q. Okay.

16 A. Or, no, was it Reagan? I don't remember. I think it was
17 Reagan.

18 Q. All right. And then your parents remained in El Salvador;
19 is that correct?

20 A. Correct.

21 Q. And your father owns a business or two businesses in
22 Woodbridge; is that correct?

23 A. It's actually my mother and father. Mostly my mother, she
24 does cosmetology, she owns hair salons.

25 Q. Okay. And with respect to -- but at that time they --

1 your parents were still down in El Salvador, correct?

2 A. Correct.

3 Q. And you had the minivan to your exclusive use; isn't that
4 true?

5 A. No. They weren't aware that I actually had their minivan.
6 I got comfortable with it. I have, you know, a big family and
7 I like to have my kids. I drive like a '99 CRV, which is like
8 a Honda.

9 Q. You had the key to the minivan, correct?

10 A. Correct.

11 Q. And you were using it a lot during that time period?

12 A. Yes.

13 Q. Correct? And you would park it at your house, correct?

14 A. Yes.

15 Q. And you drove it to the beach, correct?

16 A. Correct.

17 Q. You drove it back to the beach?

18 A. Correct.

19 Q. And you would drive it around to run errands; is that
20 correct?

21 A. Just to take my child to physical therapy and back.

22 Q. Okay.

23 A. I don't usually go out.

24 Q. And you had exclusive control over that minivan from
25 June 21 up until August 10 when Homeland Security seized it

1 after your arrest, correct?

2 A. Yes, but that was without my parents' acknowledgment.

3 Q. You had numerous communications with your dad on

4 August 10, correct?

5 A. Actually I had no communication with him. My mother
6 called me that morning. And then after that, I then received a
7 call from father's phone, but it was not father. Come to my
8 surprise, it was actually Mr. Kevin calling me from my father's
9 phone because they were together at the beach.

10 Q. But I just want to make sure we're clear on this. Your
11 testimony is that you had exclusive control of that minivan
12 from June 21 until August 10; is that correct?

13 A. I can't recall the dates, honestly, because I actually got
14 the minivan when I went to drop off my mom at the airport. And
15 I don't --

16 Q. Do you recall --

17 A. I don't recall the date that I took her to the airport.
18 That was actually the time when I got my mother's minivan, is
19 when I took her to the airport. And she told me, here, here is
20 the keys, go change the tire on my car because we had gotten a
21 flat tire on her minivan. That's the only reason why I had the
22 minivan too.

23 Q. With the assistance of Mr. Ruelas, I would like to show
24 you Government's Exhibit 133.

25 Do you recognize that letter?

1 A. Yes.

2 Q. Is that your signature at the bottom of the letter?

3 A. Correct.

4 Q. And that's your signature and your handwriting, correct?

5 A. Correct.

6 Q. And does this fairly and accurately state your
7 communication to the Department of Homeland Security or U.S.
8 Customs and Border Protection?

9 A. Correct.

10 MR. FITZPATRICK: Move to admit Exhibit 133.

11 MR. ENGLISH: No objection, Your Honor.

12 THE COURT: It's received.

13 BY MR. FITZPATRICK: (Continuing)

14 Q. So you acknowledge to Homeland Security that you had the
15 car as of June 21, 2017, correct?

16 A. Correct. I just didn't remember the date on the
17 paperwork. It was actually a long time and we never got a
18 response from the people. So I don't remember the date on it,
19 but if it is on here on paperwork and I am looking at it, then
20 yes.

21 Q. Well, you wouldn't have lied?

22 A. No, of course not.

23 Q. And you wrote -- did you write this letter on your own?

24 A. Correct.

25 Q. Did you have any assistance from your father, Daniel

1 Montalvo?

2 A. No.

3 Q. All right. Well, that's interesting because I want to --
4 on the same day Daniel Montalvo and Marina Montalvo wrote a
5 letter, I would like to you Government's Exhibit 134, please.

6 Do you see 134? Take a minute and read Government's
7 Exhibit 134, please.

8 MR. ENGLISH: Your Honor, while he reads that, may we
9 approach the bench?

10 THE COURT: Yes, sir.

11 NOTE: A side-bar discussion is had between the Court
12 and counsel out of the hearing of the jury as follows:

13 AT SIDE BAR

14 MR. ENGLISH: Your Honor, I object to this line of
15 inquiry. This is a letter authored by someone else that my
16 client didn't write. It is not a prior inconsistent statement.
17 It is simply hearsay. And I don't think he should be able to
18 cross-examine him about it, and certainly not be able to admit
19 it into evidence.

20 THE COURT: Well, he can certainly ask him whether he
21 recognizes it, right? I don't know whether -- what's your line
22 of questioning?

23 MR. FITZPATRICK: He has testified that he wrote it
24 on his own and that he didn't --

25 THE COURT: The earlier letter that he signed, right?

1 MR. FITZPATRICK: Correct.

2 THE COURT: Okay. Now this is the parents' letter?

3 MR. FITZPATRICK: Correct, that was sent on the same
4 day, and they are remarkably similar.

5 THE COURT: Okay. I think he can ask him whether
6 there are similarities, whether he had anything to do with
7 writing that letter. But it's hearsay.

8 MR. ENGLISH: From the contents it appears the
9 parents took his letter and included it with theirs.

10 THE COURT: Well, I don't know whether we're going to
11 get that far, depends upon whether you put the father on the
12 stand, I guess.

13 He can ask him questions about it. It doesn't matter
14 whether he authored it or not. We will see where we go. And
15 you certainly object if you think it is appropriate to.

16 MR. ENGLISH: Yes, sir.

17 THE COURT: Your exception is noted.

18 NOTE: The side-bar discussion is concluded;
19 whereupon the case continues before the jury as follows:

20 BEFORE THE JURY

21 BY MR. FITZPATRICK: (Continuing)

22 Q. Have you had a chance to read Government's Exhibit 134?

23 A. I am sorry, I did not read it. Sorry.

24 Q. Do you recognize the signatures at the end of Exhibit 134?

25 A. Yes.

1 Q. Whose signatures are those?

2 A. My stepfather and my mother's signature.

3 Q. What's the date of that letter?

4 A. 09/21/17.

5 Q. What's the date of your letter?

6 A. 09/21/17.

7 Q. Did you coordinate with your parents to write these
8 letters?

9 A. Yes.

10 Q. Okay. So did your parents write your letter for you?

11 A. Yes.

12 Q. Okay. So earlier you said that you wrote it, that was
13 incorrect?

14 A. It's just embarrassing that I still can't write well. So,
15 yes, my dad and my mother did help me write this letter because
16 of my disability of learning how to write.

17 Q. But you did understand when you took the stand and you
18 took an oath, that that oath was to tell the truth, correct?

19 A. Correct.

20 Q. Okay. Are there any other fabrications that you've stated
21 today because you are embarrassed?

22 A. No.

23 MR. FITZPATRICK: All right. The Court's indulgence
24 for one minute, Your Honor.

25 Your Honor, this has previously been admitted. I

1 would like to publish 194, please. Excuse me, 94.

2 BY MR. FITZPATRICK: (Continuing)

3 Q. Mr. Orellana, do you see 94 in front of you?

4 A. Yes.

5 Q. And is this a series of chats between you and your
6 girlfriend?

7 A. Yes.

8 Q. If you could please, Ms. Morrell, turn to -- it's page 170
9 on the bottom right, and -- actually, let's go to 169 at the
10 bottom, it's entry 47.

11 This is a communication that you had with your
12 girlfriend at approximately 2:11 p.m. on August 10, 2017; is
13 that correct?

14 A. Correct.

15 Q. If we can go to the top of the next page.

16 And in this chat you're having an argument with your
17 girlfriend; is that correct?

18 A. Yes.

19 Q. And your girlfriend says to you: Then IDK, I don't know
20 what you want me to do. When your dad tells you jump you ass
21 be jumping all over everything for him but at the cost of
22 everyone else.

23 Is that correct?

24 A. Correct.

25 Q. And that's a true statement, correct?

1 A. No. That's just her opinion. I mean, that's just what
2 she thinks. She's angry at me.

3 Q. When your dad tells you to do something, you do it,
4 correct?

5 A. I mean, when he asks me for a favor to go do for the shop,
6 I always go do it, it is our family business.

7 Q. And when your dad tells you pick up packages of cocaine
8 and heroin at the airport, you go do it, correct?

9 A. My father never once told me go pick up anything from
10 anybody at the airport. So I don't know where you are coming
11 with this.

12 MR. FITZPATRICK: All right. Thank you, sir.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Redirect?

15 MR. ENGLISH: Yes, sir, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. ENGLISH:

18 Q. Alex, when you received the iPhone photographs of the
19 co-defendant here, how big were those pictures?

20 A. They were actually very small.

21 Q. Can you hold your fingers out and show us about how big?

22 A. This big. And also my phone is cracked.

23 MR. ENGLISH: Your Honor, may the record reflect that
24 held up his fingers reflecting, I would guess, an inch-and-
25 a-half?

1 THE COURT: All right, it will.

2 BY MR. ENGLISH: (Continuing)

3 Q. Why did you believe that the person you were picking up at
4 the airport did not speak English?

5 A. That's what I was told.

6 Q. By whom?

7 A. By Mr. Kevin.

8 Q. Did you ever talk to this person yourself other than on
9 the telephone in Spanish?

10 A. Yes. That's the only time I talked to him, was in
11 Spanish. I had never talked to him prior before that date.

12 Q. How much math do you need to know to do your job as a
13 night auditor now?

14 A. None. Honestly, I have a calculator, and our system does
15 the entire math for us. It shows us how much we need to drop.
16 It shows like total deposit that you need to put into the
17 deposit sheet. It's an automatic system. It's literally a
18 click of a button.

19 Q. Do you normally speak to your girlfriend using English and
20 Spanish?

21 A. Yes. Especially like when we're arguing, we tend to
22 switch languages. I don't know why. It's just --

23 Q. Now, why were you going to take this person that you were
24 picking up at the airport a comparatively short distance to the
25 Marriott?

1 A. I was just going to give him the Friends and Family
2 discount and check him in because of his language barrier.

3 Q. Now, how are you entitled to a Friends and Family
4 discount?

5 A. My brother is a manager at a Marriott Spring Hill Suites,
6 is actually where I'm working at now. He actually got me a job
7 there, and he offers me a Family and Friends discount, which is
8 literally like \$39 a night comparing to 150 or \$200 a night.

9 Q. So you're going to get a discount for this person?

10 A. Correct.

11 Q. Now, in this conversation from the jail when you spoke in
12 Spanish and used the word that translates as pencils, what did
13 you mean?

14 A. I do smoke marijuana. What I meant by pencils is actually
15 vap pens, which is a condensed THC form. I usually get them
16 from Washington, D.C., a dispensary called Pots and Pans. So
17 that's what I meant by pencils because it is a vap pen, like a
18 THC pen. Instead of smoking it, actually smoking and burning
19 it, it's actually like vapor. And that's what it is, it is a
20 vap pen.

21 Q. Is it legal to purchase those in D.C.?

22 A. Yes, it is legal in D.C.

23 Q. Is it legal to possess these pens in Virginia?

24 A. Absolutely not.

25 MR. ENGLISH: Thank you. I have no further

1 questions, Your Honor.

2 THE COURT: All right, you may step down and resume
3 your seat. Thank you, sir.

4 THE WITNESS: Thank you so much.

5 NOTE: The defendant stood down.

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7 TRANSCRIPT CONCLUDED

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I certify that the foregoing is a true and
accurate transcription of my stenographic notes.

/s/ Norman B. Linnell
Norman B. Linnell, RPR, CM, VCE, FCRR